

ARTICLE XVII  
**Bluffland Protection**

**43.81 Statement of Intent and Purpose.**

The protection of visual, aesthetic, and ecological qualities of City bluffs and bluff ridgelines is listed as a specific goal within the City of Winona Comprehensive Plan. This ordinance is hereby adopted for purposes of implementing this goal, and to achieve the following public purposes:

1. To minimize, to the greatest extent feasible, the visual, functional, and ecological impacts of land disturbing activities of bluffs and bluff ridgelines, while also recognizing the legitimate expectations of property owners, and overall City economic development goals.
2. To protect persons, property, and property values from impacts characteristic of development occurring within, and within close proximity to bluffs. Such impacts include rock falls, rolling boulders, subsidence, and those associated with unstable soils, as erosion and sedimentation.
3. To protect and conserve significant City natural and visual resources as major rock outcrops, ridges and ridgelines, peaks, and landmarks, in order to retain the City's natural setting.
4. To promote the retention and improvement of those ecological and vegetative qualities which serve to stabilize steep slopes and ridgelines, characteristic of bluff faces.
5. To minimize public costs which may be associated with the development of bluff faces and ridgelines.
6. To identify and protect archaeological and cultural resources, including American-Indian burial grounds in accordance with local historic preservation goals and policies, the City Comprehensive Plan, and applicable law.

**43.82 Definitions.**

**Average Slope.** A calculation resulting from the division of the vertical difference of two elevation points (in feet) by the horizontal distance between these points (in feet), multiplied by 100.

**Bluff (non shoreland).** A topographic feature such as a hill, cliff, or embankment having the following characteristics:

- a. The feature is not located within a Shoreland Management District, as defined pursuant to Winona City Code Chapter 69.
- b. The feature, between its lowest (toe of bluff) and highest (top of bluff) elevations, exceeds an elevation difference of 25 feet.
- c. The average slope of the features land surface, as measured from any Top of Bluff point, to the nearest Toe of Bluff, or drainageway center line point, exceeds 25 percent.

**Bluff Impact Overlay District.** All land located within a Bluff.

**Building Height.** The vertical distance between the highest adjoining ground level at the building or 9 feet above the surface of the lowest floor, whichever is lower, and the highest point of the building.

**Burial Ground.** A discrete location that is known to contain, or has high potential to contain human remains based on physical evidence, historical records, or reliable information accounts.

**Drainageway.** Any natural or constructed channel which provides a course for water flowing either continuously or intermittently.

**High Potential Burial Ground and Archaeological Site Area.** An area possessing probable qualities of the existence of unrecorded or unplatted burial grounds and archaeological sites. As defined by the State Archaeologist Predictive location model, for Winona County, this definition shall apply to all lands located

within 1000 feet from any Top of Bluff as defined per this ordinance; 500 feet of any public water stream or river, as defined pursuant to City Code Section 69.04; terraces above flood plains, lower terraces back to the Toes of Bluffs with plain views of rivers and streams; and isolated hilltops with clear views of the surrounding country.

**Hydrogeology Study.** A study, prepared by a qualified professional, for the purpose of delineating Karst topography, depths to groundwater and bedrock, springs, and similar natural features, and which is designed to offer strategies to be followed in either eliminating and/or mitigating potential impacts to such features.

**Intensive Silvicultural Harvesting.** The complete removal of trees or shrubs in a continuous patch, strip, row, or block, and requiring restocking to improve or regenerate the stand.

**Karst Topography.** The type of geologic terrain underlain by carbonate rocks where significant solution of the rock has occurred due to flowing groundwater.

**Land Disturbance Activity.** A change in the use of land that would result in any form of topographic modification, increase in impervious surface coverage, or vegetative alteration. Land disturbance activity shall include, but not be limited to:

- a. Any extent of grading, grubbing, filling, and excavating.
- b. The construction of any structure, building, impervious walk/path, swimming pool, deck, patio, driveway, street, retaining wall, and public/private utility.
- c. The establishment of formal lawns and gardens, or the cutting, thinning, or removal of existing living vegetation.

This term shall not include the removal of diseased or dead vegetation, and established home lawn, garden and landscaping maintenance activities.

**Lowest Floor.** The lowermost floor of the lowest enclosed area, including basement and crawl space.

**Mass Grading.** A grading technique in which all lots, building pads, and streets are generally graded over the entire area resulting in the disruption of the majority of the on-site natural grade, and vegetation, and often resulting in, but not required to result in, a successive man made pad/terrace configuration.

**Mississippi River Viewshed Corridor.** All land of the City located between the southerly right-of-way line of State Highway 61 and the southerly shoreline of the Mississippi River main channel.

**Phase 1 Archaeological Survey.** A survey, prepared by a qualified professional archaeologist, as defined by MS 138.31, subd. 14, and which is designed to identify the presence of an archaeological site(s) on property. The survey shall be conducted in accordance with protocols of the State Historic Preservation Office document entitled "SHPO Manual for Archaeological Projects in Minnesota, July, 2005, or as amended.

**Plat.** The drawing, or map, of a subdivision prepared for filing of record pursuant to MS Chapter 505, and approved in accordance with provisions of City Code Chapter 42.

**Principal Structure.** A building in which is conducted the principal use of the lot on which it is situated. In any residential district, any dwelling shall be deemed to be the principal structure of the lot on which same is located.

**Ridgeline Transition Overlay District.** All land located within 200 feet from, adjacent to, and outside of, a Top of Bluff.

Selective Silvicultural Harvesting. Uneven – age management, the periodic removal of mature and/or high risk trees uniformly across a forested area, and not requiring stocking to improve or regenerate the stand.

Toe of Bluff. The lowest point of a 50 foot segment with an average slope exceeding 18 percent, said elevation shall represent the lowest point of a bluff.

Top of Bluff. The highest point of a 100 foot segment with an average slope exceeding 18 percent, said elevation shall represent the highest point of a bluff.

Unplatted Lot of Record. A parcel of land, created by means other than a plat, that has been recorded with the office of the County Recorder prior to adoption of this ordinance, or any amendment thereto.

Viewshed Analysis. A geographic information system tool which is designed to define if a location, containing specified height parameters, will be visible from one, or more, observation points.

### **43.83 Bluff Protection Overlay Districts**

#### **A. Jurisdiction.**

The provisions of this section shall apply to the structural and nonstructural use and development of all land located within any Bluff Impact and Ridgeline Transition Overlay District, as defined pursuant to this ordinance. In meeting the purpose and intent of this section, these overlay districts require additional standards to underlying base zoning. Any permitted, accessory or conditional, use of underlying base zoning shall be subject to provisions of this section, as well as those of the applicable base zone. In cases where standards of this ordinance conflict with any other adopted standard of the City, the more restrictive shall apply.

#### **B. Establishment.**

For reference, the limits of Bluff Impact and Ridgeline Transition Overlay Districts shall be shown on the official City of Winona Zoning Map. Said limits may, in accordance with applicable law, be modified to reflect updated data sources, and newly annexed lands into the City. If required, specific district limits shall be verified on a site by site basis, in accordance with applicable parts of this section.

#### **C. Exemptions.**

The scope of this section shall not apply to the following, provided that any exempted activity shall fully comply with all other applicable laws and/or permitting requirements of the City. If located within a High Potential Burial and Archaeological Site Area, all activities shall adhere to provisions of MS 307.08 of Minnesota's Private Cemeteries Act:

1. Platted lots. Any permitted, conditional, and accessory use of any lot, that has received preliminary or final plat approval, prior to the adoption of this section; provided, that all such use is compliant with existing underlying zoning, and plat approval.
2. Any existing principal residential and nonresidential structure, established on an unplatted lot of record prior to adoption of this section, and including existing accessory structures, provided that such structures are clearly subordinate to the established principal structure on the lot. Alterations, expansions, and additions to existing structures, and new accessory structures, are permitted, provided that:
  - a. Any new construction conforms with use, and performance standards, of underlying zoning.
  - b. No new construction may occur on any slope exceeding a grade of 18%.
  - c. Any new accessory structure must be subordinate to an established principal structure, located on the lot.

- d. Height modifications of Section 43.21 shall not be permitted within Bluff Impact or Ridgeline Transition Overlay Districts.

The intent and purpose of this provision extends solely to any lot of record that includes a principal structure that was established prior to adoption of this ordinance. Following adoption, any subsequent change in use of such a lot, resulting from any one of the following actions, shall fully comply with this section:

- a. Any zoning, or change in zoning, of the lot.
- b. Any land split, platted or unplatted, with the result of creating a new lot.
- c. The construction of an additional principal structure on the lot.

The construction of any new structure, on an unplatted lot of record that does not include an established principal structure, prior to adoption of this ordinance, shall fully comply with all parts of this section.

3. The planting of native trees, shrubs, and other vegetation.
4. The mitigation of any immediate danger or safety hazard to persons, or property. Following consultation with qualified persons, the hazard shall be documented by the City, and the underlying property owner shall be responsible for its mitigation. Mitigation may employ any reasonable method, provided that it is consistent with the purpose and intent of this section, and will not negatively compromise adjacent lands.
5. The removal of noxious weeds as defined pursuant to MN Rules 1505.0730, provided that the method of removal is by hand pulling, hand cutting, and/or the hand application of appropriate herbicides. If the method of removal requires the use of motorized or mechanical equipment, and/or the disturbance of vegetation which is not classified as noxious, within a defined Bluff Impact Overlay District, the activity requires a Land Disturbance Activity Permit pursuant to Part F (3) of this ordinance.
6. Selective Silvicultural harvesting, thinning, or removal activity necessary to promote the overall health and sustainability of forest land. All such activity shall be guided by best management practices of the Minnesota Forest Resources Council publication entitled Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners and Resource Managers (1999). If conducted within any Bluff Impact Overlay District, a Land Disturbance Activity Permit shall be required pursuant to Part F (1) of this ordinance.
7. Tilling, planting, and harvesting of agricultural crops, platted and recorded cemeteries, and land extraction activities established prior to adoption of this section.

#### **D. Land Disturbance Activity Permit – Required.**

This section imposes specific requirements, and other performance standards, relating to both the structural and nonstructural use of any Bluff Impact and Ridgeline Transition Overlay District within the City. In order to ensure that these requirements and standards are achieved, no person shall commence any nonexempt land disturbance activity within a Bluff Impact and/or Transition Overlay District without first securing a Land Disturbance Activity Permit. In determining the need for such a permit, any person proposing to initiate any land disturbance activity, on a parcel of land including an overlay district designation, shall define specific Bluff Impact and Ridgeline Transition Overlay District limits for the parcel, pursuant to Part H (1) (E) of this ordinance. In all cases, information shall be defined prior to initiating any required Land Disturbance Activity Permit Application to the parcel. If, following consultation with City staff, it is concluded that the proposed land disturbance activity will clearly be located outside of either overlay district, the activity shall not require a Land Disturbance Activity Permit. If it is concluded that the requested activity will impact any land located within an overlay district, a Land

Disturbance Activity Permit application shall be submitted, and processed, in accordance with Part H.

Any single land disturbance activity which may be subject to more than one Land Disturbance Activity Permit shall be processed under one permit.

**E. Prohibitions-Bluff Impact Overlay Districts.**

Exclusive of provisions of Part F, no non exempt structural or nonstructural land disturbance activity shall be permitted within any Bluff Impact Overlay District. Said lands may be used to meet lot area requirements of underlying zoning. When associated with platted land, Bluff Impact Overlay Districts may be used to fulfill Natural State Area requirements relating to Table B, Section I (2), of Appendix I, Chapter 42.

**F. Exceptions-Bluff Impact Overlay Districts.**

The following activities may be permitted within Bluff Impact Overlay Districts, if preceded by the approval of a Land Disturbance Activity Permit:

1. Selective silvicultural crop harvesting, thinning, or removal activities, provided that:
  - a. The Commission finds that the activity is necessary to maintain the overall health and sustainability of forest land, and will not compromise the purpose and intent of this section. In making this finding, the Commission shall consider expert or state agency comments, and recommendations.
  - b. The activity is carried out in accordance with all applicable local or state laws and permitting requirements, including the City of Winona Stormwater Management Ordinance.
  - c. The activity shall be guided by best management practices of the Minnesota Forest Resources Council's publication entitled Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners and Resource Managers (1999, or subsequent reprints).
  - d. No silvicultural harvesting, thinning, or removal activity shall be permitted within a distance of 50 feet from each side of any Top of Bluff, unless the Commission finds the activity is necessary to meet standard (a) of this section, and that it will not compromise the intent and purpose of this ordinance. In meeting this standard, the Commission shall determine whether, or not, the activity will result in the loss of screening benefits, both from and towards, any structural use of land located upland of the activity. If it determines that screening benefits will be lost, it may apply conditions requiring the planting of native trees within 50 feet either side of a Top of Bluff.
  - e. No silvicultural harvesting, thinning, or removal activities, including the construction of new logging roads, shall be permitted on slopes exceeding grades of 30 percent.
  - f. A site vegetative restoration plan is prepared by a qualified person and includes the use of native plant materials.
  - g. Intensive silvicultural harvesting, thinning or removal activities shall not be permitted, unless necessary to carry out any other permitted use of this section.
2. Construction of recreation trails, paths, and stairs provided that such facilities:
  - a. Are constructed and maintained for public use only.
  - b. Are no more than three feet in width and, exclusive of stair features, are constructed of pervious materials.
  - c. Are appropriately planned to minimize, to the greatest extent feasible, adverse effects on existing vegetation and natural/sensitive site environments.
  - d. Are subject to applicable provisions and requirements of the City Stormwater Management Ordinance.
  - e. Exclusive of necessary stairs, landings, railings, and interpretative signs, do not require the construction of any other structure.

3. Native vegetation restoration projects, and the control and removal of invasive plant species, and noxious weeds (by mechanical means), provided that:
  - a. The Planning Commission (Commission) finds that the activity, and method of carrying it out, is necessary to maintain the overall health and sustainability of forest land, and will not compromise the purpose and intent of this section. In making this finding, the Commission shall consider expert or state agency comments and recommendations.
  - b. The activity is carried out in conformance with any applicable local or state laws and permitting requirements, including the City of Winona Stormwater Management Ordinance.
  - c. If occurring within a distance of 50 feet from either side of a Top of Bluff, the Commission shall determine whether, or not, the activity will result in the loss of screening benefits both from and towards, any structural use of land located upland of the activity. If it determines that screening benefits will be lost, it may apply conditions requiring the planting of native trees within 50 feet either side of a Top of Bluff.
  - d. A site vegetative restoration plan is prepared by a qualified person and includes the use of native plant materials.
  
4. The construction of any Essential Service as defined pursuant to Section 43.01, provided that:
  - a. The Commission finds that the only reasonable and feasible location for an essential service requires placement within/through a defined Bluff Impact Overlay District, and that alternative locations and design elements have been considered.
  - b. Essential services shall be designed to consider existing vegetative, topographic, and other site features, with the intent of minimizing vegetative and visual impacts to the greatest extent feasible. Land disturbance activity shall be limited in scope to include only those lands which are necessary to construct the essential service.
  - c. The essential service shall be constructed in accordance with any applicable local or state laws and permitting requirements, including the City of Winona Stormwater Management Ordinance.
  - d. No structure associated with the construction of an essential service shall exceed a maximum height of 30 feet.
  - e. The activity shall include a site vegetative restoration plan which shall, in part, serve to promote the screening of structures required for the use, and shall include the use of native plant materials.
  
5. Publicly owned/managed stormwater retention facilities, provided that:
  - a. The Commission finds that the facility will not compromise the purpose and intent of this section.
  - b. The facility shall be constructed and maintained in accordance with any applicable local or state laws and permitting requirements, including the City of Winona Stormwater Management Ordinance.
  - c. Land disturbance activity shall be limited only to that which is necessary to construct the facility
  - d. Should the facility require the removal of trees, site restoration activities shall include the planting of native trees at both upslope and downslope sides of the structure, with the intent of replacing screening values of/from upland sites which are either used, or intended to be used, for structural purposes.
  - e. If associated with a plat, any overlay district designation that is lost to the facility shall be fully replaced within the plat, provided that replacement may not include land within a Bluff Impact Overlay District.

- f. The facility must be owned, and managed, by the City of Winona. The facility must be dedicated to the City within a period of time as specified through a required Development Agreement, or other instrument, that is fully executed prior to its construction.
6. Public streets, provided that:
    - a. The Commission finds that the only reasonable and feasible location for a public street requires placement within/through a defined Bluff Impact Overlay District, and that alternative locations have been considered. If associated with a plat, any overlay district designation that is lost to the facility shall be fully replaced within the plat, provided that replacement may not include land within a Bluff Impact Overlay District.
    - b. The activity is carried out in accordance with all applicable local or state laws, and permitting requirements, including the City of Winona Stormwater Ordinance.
    - c. The activity shall be designed to consider existing vegetative, topographic, and other site features, with the intent of minimizing vegetative and visual impacts, to the greatest extent feasible.
    - d. Land disturbance activity, shall be limited in scope to include only those lands which are necessary to construct the street.
    - e. A site vegetative restoration plan, including the use of native plant materials.

**G. Performance Standards-Ridgeline Transition Overlay District.**

The following performance standards shall apply to any non-exempt structural or nonstructural land disturbance activity, located within a Ridgeline Transition Overlay District. All performance standards shall be fully certified prior to the approval of a required Land Disturbance Activity Permit.

1. The maximum height of any structure shall not exceed 21 feet. In cases where a structure is bisected by the outer limit of a district, this requirement shall apply to the whole structure.
2. All structures shall be set back a minimum of 50 feet from any Bluff Impact Overlay District. The planting of native tree and groundcover species within these setbacks, shall be encouraged.
3. Any exterior lighting, located at the down slope side of any structure, shall not exceed a height of 8 feet above the ground, and shall be directed toward the ground.
4. The exterior color of new and renovated structures, including roofs, shall be of earth tones. Exteriors shall be of non reflective materials.
5. Mass grading, and the creation of artificial building pads, shall be avoided. The intent of this provision being to promote structural design that fits existing site conditions to the greatest extent feasible.
6. The impervious surface coverage of any lot, including an overlay district, shall not exceed 25%.
7. All feasible efforts shall be employed to retain native trees. Tree removal activity, from any Ridgeline Transition Overlay District, shall be limited only to that which is necessary to facilitate permitted structural, or nonstructural, use of a parcel.
8. The maximum grade of any driveway, serving any lot including an overlay district, shall not exceed 12%.
9. Prior to granting a permit to a land disturbance activity, any part of which will result in the construction of a structure(s) within an overlay district, a Viewshed Analysis shall be prepared for the development. The Viewshed Analysis shall be prepared by the City of Winona, and in accordance with the following parameters:
  - a. The Analysis shall be based upon a structural height of 21 feet, and at a receiving site located within limits of a defined Ridgeline Transition Overlay District.

- b. For land disturbance activity applications relating to any plat, any Viewshed Analysis receiving site location(s) shall be selected by the City following the submittal of a preliminary plat for the development.
- c. For all other nonexempt development, the location of the Viewshed Analysis receiving site shall be at the centerline of any proposed structure.

Should the Viewshed Analysis conclude that proposed structures may have the capability of being visible from the Mississippi River Viewshed Corridor, the City shall conduct additional analysis to define the role of existing vegetation, and other site features, in mitigating viewshed impacts. This analysis shall be based upon summer, leaf-on, conditions. Following consideration of the analysis, the Commission may impose any condition and/or requirement that is designed to promote visual screening between future structural development, and the Mississippi River Viewshed Corridor.

#### **H. Administration-Land Disturbance Activity Permit.**

Any activity requiring a Land Disturbance Activity Permit, pursuant to Part D of this section, shall be processed in accordance with the following provisions. No such activity may commence until the permit is fully approved. If associated with land that is to be platted, the Preliminary Plat Application shall represent the Land Disturbance Activity Permit Application for the development. Any such application shall include all information required by this section and City Code Section 42.04:

1. Application. The applicant of the proposed land disturbance activity shall complete and submit a Land Disturbance Activity Permit application to be provided by the City of Winona. All applications shall be accompanied by applicable fees, and shall include the following minimum information:
  - a. Name, address, and phone number of property owner.
  - b. Name, address, and phone number of person requesting the land disturbance activity.
  - c. Legal description of parcel.
  - d. A current topographic map, including two foot contour intervals, drawn to a scale of 100 feet to the inch, or less, and showing the limits of any Bluff Impact and Ridgeline Transition Overlay District, the location of existing structures, driveways, and abutting streets, and the location/limits of any proposed structure, or other land disturbance. Calculations, related to overlay district certifications, may incorporate the use of any reasonable method of computer modeling. Given the absence of such modeling, calculations may be calculated at 50 foot increments drawn perpendicularly to site topography. The intent of such calculations shall serve to create continuous lines, reflecting Bluff Impact and Ridgeline Transition Overlay Districts through the property. If calculations are requested, by the applicant, to be determined by the City, any such calculations shall be final unless otherwise appealed in accordance with Part I of this section.
  - e. A clear and complete description of the land disturbance activity proposed, along with supporting professional opinions, site/building plans, site revegetation plans, and other documentation which fully demonstrates the project and how it will conform to all applicable standards of this section. If required pursuant to City Code Chapter 68, the application shall include erosion and sediment control, or stormwater management plans.
  - f. Should any required application relate to land which is located within a High Potential Burial Ground and Archaeological Site, the application shall include a fully completed, and reviewed, Phase 1 Archaeological Survey. The survey shall be prepared by a qualified professional, as defined by MS 138.31, subd. 10, or who is listed on the Minnesota State Historic Preservation Office Archaeological Contractors list, and in accordance with protocols of the State Historic Preservation Office document entitled "SHPO Manual for Archaeological Projects in Minnesota", July, 2005, or as amended. For an application seeking plat approval, the scope of

the study shall include all land located within limits of the plat. In all other applications, the scope of the study shall include all land located within 150 feet from the limits of any proposed land disturbance activity, or at the applicant's property line, whichever is less.

Following the applicant's selection of a qualified professional, he/she shall notify the City of Winona of the selection. The City shall then provide written notice to Tribal Councils for the Prairie Island Indian, Shakopee Mdewakanton Sioux, and Lower Sioux Indian Communities, as well as the Sisseton Wahpeton Oyate and Minnesota Indian Affairs Council, of the pending survey, the name of the selected professional, and the location and proposed scope of the development.

If, following initial survey analysis, it is determined that additional study is needed to fully define burial ground, or other archaeological attributes of a site, all such additional study shall be completed prior to submittal of the application. Should study discover unplatted, or unrecorded burial grounds, all such features shall be fully authenticated by the State Archeologist, in accordance with provisions of MS 307.08, prior to submittal of the application.

Upon completion of the Phase 1 Survey, the applicant shall submit six copies of the document to the City of Winona, at which time the City shall forward copies to Tribal Councils for the Prairie Island Indian, Shakopee Mdewakanton Sioux, and Lower Sioux Indian Communities, as well as the Sisseton Wahpeton Oyate, and the Minnesota Indian Affairs Council. Following the date of this submittal, notified tribal offices shall have 30 calendar days to comment. Comments shall be provided to the City, and the 30 day comment period must be fully exhausted prior to submittal of the application.

The final archaeological report, comments and recommendations of Tribal Councils, and the State Archaeologist shall be considered prior to approving any Land Disturbance Activity Permit Application. Any such approval may incorporate State Archaeologist recommendations, or other conditions, designed to protect/preserve identified archaeological resources of the site.

- g. A Hydrogeology Study, prepared by a qualified professional. For an application seeking plat approval, the scope of the study shall include all land located within limits of the plat. In all other applications, the scope of the study shall include all lands located within 150 feet from the limits of any proposed land disturbance activity, or the applicant's property line, whichever is less. In part, the study shall describe recommended mitigation strategies, related to the protection of delineated sensitive features of the site, and how the applicant will meet these in carrying out the activity.

## 2. Application Review.

Any Land Disturbance Activity Permit application that does not relate to the platting of property shall be processed in accordance with provisions of MS 15.99, and the following:

Following receipt of a complete application, the Planning Commission shall hold a public hearing preceded by notice to all parcel owners of record contiguous to the subject parcel of the application, and to the official newspaper of the City, within ten days of the hearing. Following its hearing, the Commission shall consider the full application, and determine its consistency with any requirement or performance standard of this section. Should it find that the application, is consistent with, and will not compromise the purpose and intent of this section, or any other requirement of the City, the application may be approved. Any Commission decision shall be

supported by findings, and shall become final, if not appealed to Council within 10 calendar days from the date of the decision. Approval decisions may be subject to any condition, special agreement, covenant, performance bond, or other instrument, as may be recommended by the City Attorney and/or required by the Commission, to ensure that the activity is carried out in conformance with plans, specifications, and approvals relating to the application.

Any person who is aggrieved by a decision of the Commission may appeal it to City Council within 10 calendar days following the date of the Commission's decision. The Council shall hold a hearing and following the hearing, the City Council may approve, conditionally approve, or deny the application. Approval decisions may be subject to any condition, special agreement, performance bond, or other instrument, as may be recommended by the City Attorney, to ensure that the activity is carried out in conformance with Council's approval of the activity.

Following full approval of the application, any conditions, which may be imposed on the approval, shall be certified by City staff prior to the issuance of any building, or other required permit to the activity. No structural certificate of occupancy shall be issued until it has been determined that all approved plans and conditions have been met. Council approval of an application may be subject to any condition, special agreement, covenant, performance bond, or other instrument needed to ensure that the activity is carried out in full conformance with approved plans and specifications relating to the activity.

Any Land Disturbance Activity Permit Application associated with the platting of land shall be processed in accordance with preliminary cluster development plat procedures of City Code Section 43.46 (c) (1-4). The preliminary plat application shall represent the Land Disturbance Activity Permit application, and shall include all information required per City Code Section 42.04, and of Part H (1) of this ordinance. Following its preliminary plat hearing, the Commission shall consider the full application. Should it find that the application, as presented, is consistent with applicable provisions of City Code Chapter 42, and this section, the Commission may recommend approval of the application to the City Council. Commission approval may include any reasonable condition to ensure that all provisions of Chapter 42, and this section, are met.

Following the hearing on the preliminary plat, the City Council may, with applicable findings, approve, conditionally approve, or deny it. In granting approval, Council shall require that any final plat approval, be subject to a Development Agreement and other appropriate agreements and documents, and the applicant's preparation of restrictive covenants for the plat. In part, all such documents shall serve to reflect any preliminary plat approval condition, and to obligate the applicant, or any future land owner of the plat, to meeting applicable requirements and performance standards of this section. If required, any such agreement or document shall be properly recorded with the Winona County Recorder by the City. All requirements pertaining to plat approval shall be fully certified by City staff prior to the issuance of any building, or other required permit, to any lot of the plat, and no structural certificate of occupancy shall be issued until it has been determined that both the structural and nonstructural use of any lot fully complies with all terms and conditions of plat approval.

For purposes of this part, City Council approval of the final plat shall represent approval of any required Land Disturbance Activity Permit to the development. Following final plat approval, should all subsequent development fully conform with the approved Development Agreement and any other restriction, or condition of plat approval, no additional Land Disturbance Activity Permit shall be required of the plat, or any part thereof.

- I. **Overlay District Limit – Dispute Resolution.** Any person disputing an administrative decision relative to the limit of any Bluff Impact or Ridgeline Transition Overlay District, may appeal such decision to the Planning Commission. Such an appeal shall not be subject to a hearing. Following its consideration of the full record, the Commission may either uphold, or modify, the administrative decision. Any action of the Commission shall include findings, and shall become final, if not appealed to City Council within 10 calendar days, following the date of Commission action. Any final action by the City Council shall be supported by findings.
- J. **Performance Standards – Variances.** Any person who feels that the strict enforcement of any part of this ordinance, would cause practical difficulties, because of circumstances unique to his/her property, may request a variance from the Board of Adjustment. The consideration of a variance request shall be based upon those defined practical difficulties criteria contained in Minnesota Statutes, Section 462.357, subd. 6 (2), and any final action of the request shall be supported by findings.
- K. **Nonconformities.**  
The principal land use of any lot, or parcel, of land existing at the time of adoption of this section, which does not comply with use regulations of underlying zoning of the lot, or parcel, of land, shall be classified as a nonconforming use. All such uses shall be governed by provisions of City Code Section 43.32.

Ord. No. 3822 12/21/09

Ord. No. 3879 9/21/2011